

EXHIBIT T



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
CHARITIES BUREAU

212.416.6172
Catherine.Suvari@ag.ny.gov

December 2, 2022

Via Email To: afrisch@andrewfrisch.com

Andrew J. Frisch
The Law Offices of Andrew J. Frisch, PLLC
40 Fulton Street, 17th Floor
New York, New York 10038

Re: *Subpoena to VDARE Foundation dated June 23, 2022*

Andy:

I write to address significant deficiencies in VDARE's production response to the above-referenced subpoena. As explained below, we have serious concerns regarding: (1) ongoing delay and your repeated failure to abide by deadlines that you yourself proposed; (2) VDARE's failure to produce certain categories of documents based on unsubstantiated objections; and (3) redactions in the production for which you have not provided any legal justification and which appear to be applied haphazardly. VDARE is also delinquent in its required annual filings with this office: annual submissions for both 2020 and 2021, including the audited financials that you acknowledged in your November 21, 2022 cover letter, are all overdue.

Pursuant to Rule 4.4(b) of the Rules of Professional Conduct, we are also notifying you that you have produced material in your November 21 delivery that may be protected by an attorney-client privilege. *See* VF 4777-4780.

Continuing Production Delay

You have noted throughout your reports this Fall that you were first retained for this matter in August 2022 and that we agreed to extend the subpoena's stated deadline in response to your requests for more time to collect and review material. You now appear to be setting — and moving — your own chosen deadlines for VDARE's subpoena compliance: on October 25, you even remarked by email that our reference to previously-agreed deadlines was “not productive” and “divert[ed]” you from “subpoena-related tasks” on which you were working.

We are now more than three months into your representation of VDARE and more than five months since the date VDARE was served with the subpoena. In the past eight weeks alone, we have had the following assurances from you, none of which proved true: (i) that you would substantially complete hard copy production by October 31 (Oct. 6); (ii) that you would provide, on or before October 31, a privilege/ redaction log that identified each marked redaction in the production and the legal basis for those redactions (Oct. 6); (iii) that the “lion's share of documents” had been reviewed and sent to the vendor for a substantially complete production by October 31 (Oct. 20); (iv) that “95% or so” of VDARE's hard copy documents were in process at the vendor and “well underway aiming for substantial compliance on October 31 or before” (Oct. 21); (v) that

40 gigabytes of potentially responsive email records, as well as “more documents potentially responsive to the subpoena” could be reviewed and produced on or before November 21, including on a rolling basis (Oct. 31). In the last ten days, you have announced instead that email review is suddenly taking “longer than anticipated” and that you will “aim[] to complete that part of the response to the subpoena by December 12, 2022.”

As of the date of this letter, you have produced a total of roughly 6,000 pages of Bates-stamped material, the first section of which you have produced three separate times and all of which bears extensive unlabeled redactions to which we have repeatedly objected. The material produced to date does not appear to include any significant volume of email from the VDARE accounts that you first identified to us on October 31 and does not identify which of the subpoena’s requests each document responds to. Please complete the production of both hard copy and ESI documents, in the form called for by the subpoena, by **December 12, 2022**.

VDARE’s Unsubstantiated Objections to Certain Subpoena Requests

In July 2022, we took steps to clarify several of the subpoena’s requests in response to VDARE’s stated privacy concern for donors and volunteers, but we have consistently objected to a generalized assertion of sensitivity and have emphasized that we do not agree to the withholding of documents and information on that basis.

Your production cover letter on October 31 stated that “VDARE is concerned that disclosures risk further impairment to freedoms of speech and association of itself and others.” We note that the requests you identified in your October 31 letter as intrusive on fundamental liberties included the request for VDARE Board meeting minutes (Req. No 5), the request for *outgoing* solicitation materials sent on VDARE’s behalf (Req. No. 8), the request for documents identifying the individual(s) who control VDARE financial accounts (Req. No. 23), and the request for documents concerning physical renovation of VDARE’s West Virginia castle property (Req. No. 39). You have not articulated how — and we do not agree that — these requests implicate any constitutional speech or associational concern for VDARE donors or content providers. To the extent any of these documents have been withheld from your productions to date, we demand complete delivery by December 12, 2022.

VDARE’s Failure to Provide a Privilege/Redaction Log

We have asked several times that you provide a privilege/ redaction log to identify the legal basis on which VDARE is redacting or withholding particular material, and we asked specifically in our conference on October 6 that you provide such a log on or before October 31. Such a log is necessary for us to understand and evaluate VDARE’s basis for redacting or withholding information. Your October 31 letter offered only the assurance that you expected to complete your redactions to responsive financial records by November 21 and that you would be in the best position to explain those redactions after you had completed them. On November 21, you stated without explanation that you would identify redactions in the production “once the project is complete.” We still have not received a log.

We have explained in several exchanges with you that we will not agree in advance to special treatment for a subset of vendor information that you and/or VDARE independently identify as sensitive: VDARE must articulate particular categories of material covered by any individual request that it believes cannot be lawfully demanded and provide substantive explanation of how the disclosure being sought would operate to chill VDARE’s protected associational or speech rights. We will meet and confer on this issue again only after production of a written privilege-redaction log to serve as the basis for meaningful review. Please produce such a log by **December 12, 2022**.

We also note that, in your letter of September 26, 2022, you asserted that subpoena requests for employee, vendor, and contract information violate First Amendment rights held by those

entities because “[m]ost of [VDARE’s] employees and contractors are writers and editors for the site.” The documents that you have produced to date have been redacted far beyond the limits of any editorial content: you have redacted, among other things, (i) contact information for an architectural firm hired to review potential renovations at the Berkely Springs Castle property (VF 4427-4428; VF 4766-4767), (ii) the contact name, but not address, of a Switzerland-based firm hired to perform, according to its own invoice, “standard software development and server administration,” (VF 3980-3981), (iii) the name of VDARE’s bookkeeper, which appears to be separately disclosed in your production on a publicly-filed IRS Form I-9 prepared to confirm Lydia Brimelow’s eligibility as an employee of Happy Penguins LLC (ex. VF 4280, VF 4282); (iv) contact information contained in a public magazine subscription renewal form sent to Peter Brimelow (VF 4187) (also marked as Confidential); (v) bank statements to accounts held by entities *other* than VDARE, including Happy Penguins LLC and Peter and Lydia Brimelow, as individuals (VF 4346-4348, VF 4338-4343); and the contact information for an individual or company hired to perform “VDARE Admin” services (VF 4017, VF 4274). These redactions are accompanied by the unredacted disclosure of numerous other VDARE contractors, vendors, and employees identified in VDARE’s records, so that your stated treatment of redaction appears inconsistent, to say the least, and raises serious concerns about the legal basis for any such redactions.

VDARE’s Failure to Provide Mandatory Filings

As we have previously noted, VDARE is delinquent in its filing of its 2020 Char500 and schedules, including the IRS Form 990. That filing was due in November 2021. VDARE’s filing for 2021 was due on November 29, 2022 and has not been received. Attached to this letter is a notice of delinquency from our Registration Section.

We have discussed each of the above issues with you on several occasions and have agreed to significant deadline extensions to accommodate your requests for additional time to review. We reserve all rights regarding our position on your client’s non-compliance with the subpoena and will seek judicial intervention to obtain compliance if the documents and information listed here are not produced by December 12, 2022.

Sincerely,

/s/ Kate Suvari

Kate Suvari
Assistant Attorney General

Encl.

cc: Assistant Attorney General Yael Fuchs



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

Letitia James
Attorney General

Division of Social Justice
Charities Bureau

December 2, 2022

Vdare Foundation
PO Box 211
Litchfield, CT 06759

Re: Vdare Foundation
Delinquent Filing – Action Requested
Registration Number: 41-37-83

Dear Sir or Madam:

This letter is to notify you that the above organization is delinquent in filing its annual financial reports with the New York Attorney General's Charities Bureau. New York law requires registered organizations to file annually Form CHAR500, IRS Form 990 and, if applicable, an independent certified public accountant's audit or review report and pay an annual filing fee.

In order to resolve the delinquency, the organization must submit its delinquent filings, with a copy of this letter, to the Charities Bureau within **thirty (30) days** of the above date. According to our records, the following filings are delinquent:

- **Fiscal Year Ended 12/31/2020: CHAR500 Annual Filing – complete online.**
- **Fiscal Year Ended 12/31/2021: CHAR500 Annual Filing – complete online.**

A portal for electronic filing is posted on our webpage www.charitiesnys.com – online filing is required. Please be advised that Article 7-A of the Executive Law prohibits a delinquent organization from raising funds in New York, including through government grants. In addition, failure to submit all required filings may subject the organization to cancellation of its registration.

If you believe that the organization has already submitted its required filings or if it is no longer conducting activities or soliciting contributions in New York, please notify this office in writing upon receipt of this letter and include a copy of this letter with your response. Please mail your response to the attention of Stephenie Brathwaite. If you have any questions concerning this request, please contact the Charities Bureau by phone at (212) 416-8401 or by email to Stephenie.Brathwaite@ag.ny.gov.

Sincerely,

Hanna Rubin
Director-Registration Section
Charities Bureau